

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, May 16 2005, at 9:00 a.m.
State Capitol Building, Room 303

PRESENT: Governor Brian Schweitzer, Superintendent of Public Instruction Linda McCulloch, Secretary of State Brad Johnson, and Attorney General Mike McGrath

VIA PHONE: State Auditor John Morrison

Motion was made by Ms. McCulloch to approve the minutes from the regularly scheduled meeting of the Board of Land Commissioners held April 18, 2004. Seconded by Mr. McGrath. Motion carried unanimously.

BUSINESS TO BE CONSIDERED

505-1 METALLIFEROUS LEASE APPLICATION

Monte Mason, DNRC Minerals Management Bureau Chief, said this is an application for gold. The applicant's Operating Plan submitted is for placer mining on some previously-worked historic remnants of activity located SE of Raidersburg. The terms are standard, \$1.00 per acre for the first year, escalating to \$3.00 per acre rental thereafter. Royalty is 5% of gross, and there is a \$250 annual advance minimum royalty, and an initial bond from the DNRC at \$1,000, which can be adjusted at any time. The leases are issued and the lease itself does not confer the right to the lessee to conduct any actual operations, it has to go through an Operating Plan permitting process that includes DEQ. In this case, the applicant has submitted his initial Op Plan to DEQ and that review is ongoing. The bond has already been set by DEQ at \$4,000, its a relatively small proposed operation. The total amount of bonding initially will be \$5,000.

Mr. McGrath said he was concerned about the \$1.00 per acre figure saying it seems awfully low. He asked Mr. Mason to walk the Board through the history of that, and asked is that tied to federal rates?

Mr. Mason said it is not analogous to the feds because for locatables they still go through the claiming process from the mining law of 1872, where a person goes out and stakes his claim. For the state it is a minimum rental set in Administrative Rule. I would have to double check, its either structured as an exact number in which case we'd have to do rulemaking, or it may be set as a floor in which case I could come to the Board and recommend something higher. It is nominal in terms of rental, but remember it doesn't allow them to do anything out there unless an Op Plan is submitted. The royalty is set on what might actually be removed, if anything is found that is commercial. We also include a \$250 advance minimum royalty which does serve in many respects to escalate the rental because it is a "use or lose per lease year" type of royalty. The applicant needs to produce something, the royalty he produces will be credited against that \$250 until he goes above it. If he does not produce anything, the state keeps it each year. So, on top of the \$1.00 per acre he is paying \$250 minimum which in essence is additional cost to the applicant while he is not producing in commercial quantities.

Mr. McGrath said this is a placer operation, so will he build structures on this property?

Mr. Mason said the applicant's proposal so far consists of working into a bank of previously-worked material from the historic mining. He will do some placer on that to see if he can find any remaining gold

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 2

that might be commercial. The rental rate does escalate. It goes to \$2.00 and then to \$3.00 per acre per year.

Mr. McGrath said that seems pretty low to me, and the bond is?

Mr. Mason said we hold the bond for lease compliance and upon issuance of this lease we have a \$1,000 bond with us and that can be used for anything. If the lessee doesn't pay the rentals, we can utilize it for that, if we have a problem with royalties we can use it for that. Anything within the lease that requires compliance we can use that bond. It can be adjusted at any time. Obviously, initially, there is not much being proposed here. Our operations are subject to the regulatory authority of DEQ, they hold the bonds with them regardless of whether it is state land or private. They have reviewed the Op Plan and calculated it as a \$4,000 bond for the operations he is proposing. Total is \$5,000.

Mr. Johnson said this lease would not preclude other surface uses, is that correct? Or could this ground still be committed under a grazing lease in addition to the mining operations?

Mr. Mason said yes it could. And I suspect it is already leased for grazing. It does not preclude other operations.

Mr. McGrath said do you know when the Administrative Rule for this was last reviewed?

Mr. Mason said I would suspect its been at least 20 years.

Mr. McGrath said maybe updating that is something the Director might want to work with us on. It seems out of line.

Mr. Mason said it is nominal.

Mr. McGrath said I understand about the royalty, but it costs us more to process it.

Mr. Mason said these operations are typically not huge money makers for the trust.

Governor Schweitzer said on the 5% royalty, how is that reporting and what is the oversight? How did we get at 5% and who is responsible for that?

Mr. Mason said we are. Right now and for the last several years we've not had any commercial production on metalliferous leases. I do not have an ongoing program. The 5% of gross is tailored within the lease to be 5% of net smelter return. If we had commercial production, we would receive and review the documentation that is related to their actual sale after net smelter and see what they have done with that to net it back to the mine site, transportation and other costs for processing away from the mine site. The processing costs within the lease area is not deductible. There would be a process of reviewing the actual records.

Governor Schweitzer said we have an ongoing process of monitoring grazing leases to make sure they are putting the correct number of cattle out there and keeping the pasture in good shape. The same is true for oil and gas and timber. If we don't have a process that is ongoing, I am looking for that level of certainty that we will have the ability of tracking this.

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 3

Mr. Mason said when I said we don't have an ongoing process, that is for metalliferous leases because we don't have any activity for production. We have an audit program that deals with oil and gas and coal which together comprises 95% of our royalty revenue. So we do have a program for that.

Governor Schweitzer said supposedly this one will mimic them in some way with modifications for hard rock.

Mr. Mason said it certainly would. Operations like this are extremely speculative, however.

Mr. Johnson moved for approval for the metalliferous lease application. Seconded by Ms. McCulloch.

Mr. McGrath said Mr. Andes, do you have any idea if there is an Administrative Rule on this issue? And if it is a minimum or if it is set by rule that the \$1.00 escalates to \$3.00?

Roy Andes, MonTRUST, said no.

Mr. McGrath said is there anybody that knows?

Tom Schultz, DNRC Administrator Trust Land Management Division, said we'll check on that and get back to you before the end of the meeting.

Mr. McGrath said I want to make a substitute motion. I am going to vote against this unless there is a rule that says we have to vote for it. If it is set by rule then I will vote for it because it is a reasonable expectation. I move to put this at the bottom of the agenda and we can find out about the rule.

505-2 REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
(Devon Energy Corporation)

Mary Sexton said this is a request for approval of a communitization agreement. This parcel is 320 acres in Chouteau County. The permit's development is in conformity with the regulations of the Montana Board of Oil and Gas Conservation. Within this section we have about 40 acres. The department's tract comprises about 12.5% of the communitized area. The communitized production will be allocated to each tract based upon the relationship of the acreage with the total acreage within the area. the department will receive 1.5625% of all production. This agreement allows the state to receive its proper share of production from the spacing units.

Mr. McGrath moved approval of the request for a communitization agreement by Devon Energy Corporation. Seconded by Mr. Johnson. Motion carried unanimously.

505-3 LAND BANKING: APPROVAL TO CONTINUE THE SALE EVALUATION
PROCESS

Ms. Sexton said as we promised last month, there are a substantial number of parcels for the land banking process. HB 223 passed the 2003 Legislature and provides a five-year window to develop rules and implement the land banking program. We did go through the rulemaking process in September 2004. In January 2005, we began to receive nominations for about 100,000 acres. From those nominated tracts we

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 4

have chosen parcels that meet a number of criteria. Last month the Board did approve two parcels totaling 639 acres. Again, we can have up to 20,000 acres that have to be land banked before we can move ahead in purchasing property. We are moving forward today with 22,614 acres spread throughout six different counties.

Jeanne Holmgren, DNRC Real Estate Management Bureau Chief, said as Director Sexton mentioned, in 2003 we received the authority to sell and acquire land. In reality the Board has always had that authority to sell, but this bill allows us to bank those monies and buy replacement properties. In the process that was developed through our negotiated rulemaking process, the Board sees these applications on three occasions. Prior to anyone making an application nominating a parcel there are 26 questions that are asked. The Land Office will sit down or visit over the phone and determine: is there public access, is there public recreation on the property, is it isolated to us, are there threatened and endangered species, will it eliminate access to other public lands, does the parcel have administrative costs, is it low producing? And a variety of different elements associated with land banking. If it is a good parcel does it make sense for us to dispose of those parcels. Of course the concept behind land banking is that we want to dispose of those isolated parcels, those parcels that are surrounded by one landowner and are sometimes surrounded by one or two landowners. Those are generating low rates of return, primarily grazing land; we are not interested in disposing of our agricultural lands because we are making a greater return off of those properties. We want to dispose of those low revenue properties that are isolated from public access so we can acquire properties that generate greater revenues and also have public recreational opportunities. For the parcels that are nominated for sale the department does an initial review and starts selecting and nominating parcels for suitability for sale. Parcels are also nominated by those that come through that initial screening by the department. We have received over 300 nominations. What we have brought to the Board last month and will bring over the next few months will be parcels that meet and exceed the criteria. Prior to bringing a parcel to the Board we conduct a MEPA analysis. Public scoping has occurred, and there have been several public meetings across the landscape, then a determination is made based on the department's recommendation. There is an appeal process if the lessee is not satisfied with that recommendation, where they do have the ability to come before the Board and appeal the decision. What is before the Board today are those predominately isolated parcels totaling over 20,000 acres for preliminary approval to move through the process. The next step in the process will be the due diligence part where the department will conduct an appraisal and a cultural survey. With the appraisal we will be able to come back before this Board with recommendations to set a minimum. The Board sets the minimum bid and then we go through the oral auction process. After we have a final sale, we issue the deeds. We ask for preliminary approval with these parcels today.

Ms. Sexton said as we look at these parcels, there are several factors we take into consideration. There was concern expressed with corner-to-corner access with other public lands. We were very specific to rule out those parcels which did have corner-to-corner access with accessible public land, i.e., BLM or Forest Service lands. That further decreased the pool from which we had to choose. Also, as the Board looks at the appraisal, which will be the next step these parcels will go through, you will set a minimum bid, we will be appraising these properties as according to rule both with and without access. We will be appraising them both ways. The Board will have that information available in order to set the minimum bid.

Governor Schweitzer said on your checklist item 12 asks does the parcel have potential to moderate or high appreciation and if it is yes, it's blank. If it is yes, does that disqualify it?

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 5

Ms. Holmgren said no it doesn't necessarily disqualify it. In order for us to have enough money in the bank if we are selling isolated properties in Eastern Montana and we are buying properties that are not isolated and generating a greater rate of return we have to sell some of those properties that have potential for appreciation of greater land value.

Governor Schweitzer said does it mean that as we move forward when we sell properties that have a potential for a higher rate of appreciation that we are going to be looking for properties in that bank that will offset those sales? I don't want our portfolio to shift from one which has an expectation of a high rate of appreciation for those that have an expectation that don't.

Ms. Holmgren said that's true. And the criteria for us to consider when we are looking at property to purchase are for non-isolated properties that are generating a greater return; those properties that still are appreciating in value as well. Those are the types of considerations we will be making when we are buying and looking at purchasing properties.

Governor Schweitzer said but do we have a way of flagging properties that have the expectation of a moderate to high rate of appreciation so that we're trying to replace them in the portfolio as opposed to being in a position of selling those and buying some with a less likelihood of appreciating?

Ms. Holmgren said we certainly have the ability to do that. In order to acquire property that is consolidated and generating a greater rate of return, we have to look at them. Those that are not appreciating as great but still have the rate of appreciation, we may have the ability to look at those properties too. We are also looking at some properties that already have a Conservation Easement on them, those properties would have a significant rate of appreciation as well.

Governor Schweitzer said there ought to be a process for flagging those. I think we ought to be looking at replacing lands in the portfolio at the same rate they are leaving the portfolio, and that have the moderate to high appreciation ability. It is important. If not, this system could take us in a place where we don't want to be years from now. I want to make sure we are maintaining a good mix in our land portfolio.

Ms. Sexton said I would suggest the department put together some criteria for the Board's consideration regarding purchases and what those criteria might be. We will bring it to the next Board meeting. We have about a year before this goes through the process but that gives us time to think about the process. We do not have a formalized process set up for that, so that is an excellent suggestion that we have criteria established for the properties we are purchasing. Would you like to see those criteria next time for your review?

Governor Schweitzer replied yes. He said remember we're just talking about preliminary today, we are not approving anything. We still haven't had them appraised so there is a lot more to do before the sale.

Ms. Sexton said this is new to all of us and establishing procedures as we go through, hopefully, we will be able to continue this process. We have a good set of established procedures and we will come together with some preliminary criteria and bring them to you for review the next month and will work on that over the next several months until we come up with a good set of criteria for purchase.

Ms. Holmgren said in the Administrative Rules we have that criteria established that we do have to look at for replacement properties, but we can put together a package that illustrates what that is.

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 6

Motion was made by Mr. Johnson to grant preliminary approval to continue the sale process. Seconded by Ms. McCulloch. Motion carried unanimously.

505-4 HEADQUARTERS TIMBER SALE

Ms. Sexton said this proposed sale is located approximately 2.5 miles east of Clearwater Junction, and is out of the SW Land Office. This is a small sale, the volume is 11,000 tons, or 1.9 MMBF, with an estimated value of \$256,000. The sale totals 320 acres, and is primarily Douglas-fir and ponderosa pine which will be selectively harvested to replicate historical stand conditions. No new roads will be built. There is one active nest of eagles. That has been mitigated and hauling on the road will be limited to the non-breeding period. Other issues have also been considered for this sale.

Motion was made by Mr. McGrath to approve the Headquarters Timber Sale. Seconded by Mr. Johnson. Motion carried unanimously.

505-5 WEST FORK SWIFT CREEK TIMBER SALE

Ms. Sexton said the proposed sale is about 20 miles NW of Whitefish. It is a larger timber sale and had a number of factors involved. There has been an EIS on this sale.

David Groeschl, DNRC Forest Management Bureau Chief, said the sale is located on the NW Land Office out of the Stillwater State Forest and covers 1,076 acres, 11 MMBF, with an estimated value of \$1.6 million. There is some new road construction required, 2.3 miles, additional road reconstruction work, and bridge replacement of an old timber bridge with a new steel bridge. There has been extensive public involvement opportunities, the main issue expressed was that this sale does involve the harvest of old growth trees. Out of the 1,076 acres there are about 243 acres that would be harvested. There are several reasons for the selection of that alternative to harvest those areas with some old growth in them. When we look back at the definition for old stands that was originally used by Losensky, the estimated that there were 29% old stands historically on the landscape. When we used that definition prior to 2001 on the Stillwater, our SLI information showed that we had about 48% of the forest that met old stand conditions. That definition was very broad, 150-year old stands with 4,000 board feet. We saw that we had an over representation of both the sub-alpine and the mixed conifer forest types on the Stillwater and we had an under representation of the more seral species Western larch, Western white pine, white bark and Douglas-fir types. We also had some under representation of the age class distribution. We had under representation of the zero to 39 years and we had an over representation of the older age class 150+. When we went to the Green et al. definition in 2001, there was no direct link to the Losensky analysis. That is why in the EIS there is some confusion as to why the percentage seems so much lower. The Green et al. definition is based on the habitat and forest type we are dealing with, and we are dealing with cool, moist sites here. The Green et al. definition for old growth based on those conditions is 180 years old, ten trees per acre at 21+ inches or bigger. The definition for Green et al. is much more restrictive than it was for the Losensky, therefore, in the Green et al. definition we show about 8.9% old growth rather than old stands because the two are not directly correlated. We had 8.9%; harvesting 243 acres would drop it down slightly to 8.2%. Based on historic conditions the range was thought to be somewhere around 15% - 20% and under our State Forest Land Management Plan (SFLMP) we were attempting to try to maintain 50% of old growth on the landscape. So the 8.2% is still within that range. By not treating those stands they will continue to move towards a more shade-tolerant species and we are

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 7

trying to get some of those back to our desired future conditions in the SFLMP. Again, trying to move them towards the more seral species rather than allowing the more shade-tolerant species to dominate those sites over time.

Governor Schweitzer asked if this was advertised for public comment in the community?

Mr. Groeschl replied yes it was. Under public involvement it was advertised in the *Whitefish Pilot* and *The Daily Interlake*, there were also letters sent to individuals, agencies, industry representatives, and other organizations that expressed an interest. There was the original scoping and public involvement during the draft EIS. Since the notice, we've had three comments on this sale during the draft EIS, but since the Decision Notice was sent out we've had no additional public comment.

Motion was made by Ms. McCulloch to approve the West Fork Swift Creek Timber Sale. Seconded by Mr. McGrath. Motion carried unanimously.

Ellen Engstedt, Montana Wood Products Association, said which ever alternative (B or C) is chosen it will come under the annual sustained yield number that you all are very familiar with, 53.2 MMBF. Alternative B does provide for more on-the-ground activity in an area that shows there are some dead trees that could use active management. This would help with forest health and possibly also lower wildfire risks in that area which would be important. The timber markets currently are very good and they are very stable. So the larger sale would contribute more to the trust. We are urging support of the department's recommendation.

505-6 RIGHTS-OF-WAY APPLICATIONS

Ms. Sexton said this month we have 22 applications for rights-of-way and they are primarily historic easement applications. Numbers 12745, 12746, 12747, 12748, 12749, 12750, 12751, 12752, 12753, 12754, 12755, 12756, 12757, 12758, and 12759 are from Fergus Electric Cooperative for an overhead electric distribution line; #13517 is from Murnion Livestock for a private access road to a single family residence; #13527 is from the Montana Department of Transportation for highway bridge construction and maintenance; #13529 is from Mid-Rivers Telephone Cooperative for a buried telephone distribution line; #13534 is from Jack Stone for a private access road to a single family residence; #13535 is from Custer County (MDOT) for highway bridge construction and maintenance; #13536 is from the City of Missoula for a pedestrian bridge; #11051 is from Marl Lake Road Users Association for a private access road to conduct timber management activities and to access eight land parcels. Ms. Sexton pointed out two applications of interest. The first is on page 21, it is the request from the City of Missoula (#13536) for a bridge easement. It is for a footbridge going across to the University. The other one is from the Marl Lake Road Users Association in Libby (#11051). This is for a widening from a 30 foot easement to a 40 foot easement. There is compensation attached to this request.

Governor Schweitzer asked about the location of the footbridge.

Ellen Buchanan, Director of Missoula Redevelopment Agency, said it is Madison Street and Van Buren Street, the two primary accesses to the University from the downtown area.

Governor Schweitzer said that will mean people can cross over from two bridges to get to the University.

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 8

Mr. McGrath said this is downstream from the Van Buren Street bridge?

Ms. Buchanan said yes, it is west. Van Buren Street is the eastern most bridge which is strictly a foot bridge. Madison Street currently has multiple conflicts between cars, pedestrians, and bicycles and has inadequate sidewalks and a bicycle lane so we're going under that bridge on the abutments to tie the trails together.

Motion was made by Mr. McGrath to approve the package of rights-of-way applications. Seconded by Ms. McCulloch. Motion carried unanimously.

505-7 2005 COMPETITIVE BID HEARINGS: FINDINGS AND RECOMMENDED
RENTAL RATES FOR AGRICULTURAL AND GRAZING LEASES

Ms. Sexton said we only had four hearings for competitive bid on our agriculture and grazing leases, down from other years when we've had probably 4-5 times the number of hearings. The first one was Lease #9450 from Tom Heintz, lessee. The high bidder was not at the hearing. Mr. Heintz has been an excellent steward on his property, a beautiful piece of property near the Gallatin River. He has taken care of the property and I recommend he remain the lessee. His bid was \$30/AUM. The high bid was over \$100/AUM and Mr. Heintz made an appealing case for retaining the lease. The next one Lease #7428, was from Teigen Land and Livestock Company located in Fergus County. The competitive bidder did not attend the hearing. This parcel has been utilized by Teigen Land and Livestock for a number of years. They have been good stewards of the property. I recommend they retain the lease. The lease amount was reduced to \$11.40/AUM which is an average between Fergus and Petroleum Counties. The recommendation is that the lease rate be increased and the lessee remain Teigen Land and Livestock. The next one is Lease #7685, the lessee is Craig Swanke and the high bidder is Patty Rickard. This was primarily for a grazing property, 152 acres close to Billings. In listening carefully to both parties we recommend the Board issue the lease to Patty Rickard who bid \$30.64/AUM. This is the prevailing community standard. Ms. Rickard did a great deal of work looking at what the going rate was for grazing property for horses. Also included with this, Ms. Rickard agreed to a grazing management plan that there would be electric fence used to implement the plan, there were additional services and additional stewardship that she was willing to apply to this parcel. I recommend Ms. Rickard get the lease. The last hearing was on Lease #10120 and the current lessee is Jim Sparks in Dawson County. The bid was on 16 acres. The competitive bidder, Brett and Leanne Hoagland, was not at the hearing in person but she did attend via telephone. Mr. Sparks had been using this as a staging area for his sheep, he actually does not live in the area anymore. Ms. Hoagland is a neighboring landowner and raises horses and she wanted to use this property for horse pasture. In this area horse pasture isn't in high demand. Ms. Hoagland bid \$50/AUM. I recommend that Brett and Leanne Hoagland be the most qualified lessee as evidenced by her training experience. In effect, two of these parcels will remain with the lessee and two will go to the high bidder.

Governor Schweitzer said on the Sparks lease (#10120) he has put some improvements on it. Will he be compensated by the new lessee?

Ms. Sexton said yes. If it is contested it would come to the department for arbitration.

Motion was made by Mr. McGrath to approve the director's recommendations on the 2005 competitive bid hearings. Seconded by Mr. Johnson. Motion carried unanimously.

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 9

Mr. Johnson said in the Teigen Land and Cattle Company lease (#7428) I see we've entered into, on a small acreage, a share lease on the cropland. How extensive is that practice as opposed to establishing some kind of cash lease?

Ms. Sexton said we have a cash lease on less than 10% of our property and the rest is crop share for ag ground.

Kevin Chappell, DNRC Agriculture and Grazing Bureau Chief, said when a lease comes up for renewal by law it is renewed on a share basis. A cash lease would be issued in a case where both the lessee and the department can come to an agreement on what that rate should be. As Director Sexton mentioned, it is probably less than 10% of our ag leases that are on a cash basis. If it is at the minimum, it is ¼ crop share to the state.

505-8 SOIL MONITORING OF DNRC FOREST MANAGEMENT ACTIVITIES

Ms. Sexton said this next presentation is by Jeff Collins who has been our soil scientist for 25 years. He studies the soil from many of our timber sites and has compiled a credible amount of information regarding soil monitoring on our timber sales.

Jeff Collins, DNRC Forest Management Bureau, said I believe the people of Montana, as well as the DNRC, are very concerned about maintaining forest health through wise soil management practices. I'd like to review with you our DNRC soil monitoring projects for the period 1988 through 2004. Our soil monitoring objectives were to assess the harvest effects on a wide range of forest soils in Montana and varied equipment. We wanted to evaluate if the Best Management Practices (BMPs) and soil mitigation measures were implemented and effective on the ground. We also wanted to determine if these impacts that we're seeing associated with forest harvest methods were within the levels analyzed in our environmental effects analysis. In those rare cases where we had above-average impacts we wanted to revise our mitigation measures so we wouldn't have recurrent impacts associated with those practices.

Forest soils differ largely from agricultural soils in that they are typically shallower in depth and are so dependent upon the surface soil properties. Currently our soil monitoring program is to monitor five timber sale sites per year. We apply all of the monitoring objectives to each of those sites. In 2004 we summarized our monitoring completed on 67 timber sales. In addition, we have had two more site-specific projects that have been completed associated with some of our more recent fire salvage operations, the Moose Creek Fire and the Sula Fire where erosion and productivity were concerns.

We also evaluated the application and effectiveness of BMPs on these sites. We wanted to determine if the logging systems employed were suitable for the terrain and we wanted to see if the skid trails were properly designed and located to try to minimize effects as consistent with our environmental assessments. We wanted to see if the harvest operations minimized soil impacts and maintained site drainage. We determined the extent and degree of soil impacts with this study for each site. We wanted to assess harvest effects on steep terrain because as slope steepness increases the potential for erosion increases. Within the BMPs it's been identified that on slopes over 40% we should avoid equipment operations unless we can avoid erosion or affects to soil productivity through our mitigation practices. We are also interested in treating the slash so as to preserve a surface horizon of the soil while also meeting the requirements.

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 10

Concerning woody debris management, our goal is to maintain historic levels of woody debris and conserve a portion of the fine litter to provide nutrients, moisture, and sustain rooting of all forest plants, especially conifers. Untreated slash can be a fire hazard. Treated slash acts as a fertilizer and a mulch where the fire hazard is reduced, while maintaining the integrity of the site. Some of the methods we use to retain proportions of woody debris are to leave the slash on the site by and treating the slash in place and then skid the logs in. Another more common practice is to whole-tree harvest the site and bring trees to the landing where they are processed. From there the operator return-skidded the debris with the next round of skidding back to the forest harvest site and distributed it across the area at a low height to meet slash law requirements.

Our monitoring methods basically are on-the-ground paced transects, some were measured distances, to assess soil conditions. Fundamental to our monitoring was to stand and look at our feet and quantify what we saw along the transect line, based on a discreet class of soil conditions defined within our report. We looked at the skid trail spacing, condition and drainage of those trails and from that we could determine the area affected within the timber harvest. We determined the amount of woody debris along transects by counting woody debris which is defined as material over three inches in diameter.

We split our soil conditions into two broad monitoring categories: non-detrimental and detrimental soil conditions. Non-detrimental soil condition classes include undisturbed, deposition and slight disturbance. Soil deposition were areas where soil materials is pushed up by mechanical means such as a blade of machinery or pulled in a tree and increased the surface soil depth. Deposition is a non-detrimental effect, or if anything, it would possibly improve the site. Slight disturbed sites we quantified as those areas where the surface duff had possibly been mixed into the surface but no more than two inches of the mineral surface soil had been removed from that site that could affect the potential soil productivity. Some disturbance could actually be good for our conifer regeneration. Site disturbance can be a benefit for reestablishment of trees, as long as it is not excessive in an area.

Our other soil category is detrimental soil condition classes which we analyze for as part of our environmental assessments. Detrimental soil conditions are soil displacement, soil compaction, and erosion. Soil displacement would include ruts and areas where more than two inches of the surface soil has been removed from the site and could affect both rooting and potentially hydrological function by concentrating surface water flow. We also assessed soil compaction in a number of ways, one was very simplistic where we poke the ground with a knife and assess the relative comparison of resistance to penetration to the knife. You can see and feel places that are very hard and densely compacted versus places that are relatively easy to penetrate. The sites that are relatively easy to penetrate as slight compaction will bounce back in a short duration with frost effects. Severely compacted soils are platy and take longer to recover. We also further quantified these assessments with lab samples to measure the relative density of the soil and in one case we experimented with a penetrometer instrument which measures resistance. Concerning erosion there are three forms, sheet, rill and gully erosion. Mostly what we've seen is relatively few cases of sheet erosion occurring on our forested operations.

Monitoring Results. As we discussed before, erosion on the green timber sales is very minor. Of the 67 sites we reviewed, only three sites had erosion observed on those monitored sites and none of those sites was a water quality impact. The erosion that occurred was basically sheet erosion. The soil disturbance and compaction varied by equipment and terrain. Over 30 sites had less than 10% of the ground impacted. The sites that did have greater impacts were those harvest sites where the equipment operators had departed from BMP application. Several of the sites with the highest impact sites, were early on in the BMP process in 1988 and 1989. A couple of the sites were prior to BMP application. Concerning

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 11

coarse woody debris we had mixed results but we have largely maintained historic levels of woody debris on the ground. We have been doing woody debris assessments for about 5 years.

More specific to the fire harvest operations, the disturbance on both the Sula and Moose Fire sites was very low in keeping with our environmental assessments. The sites were winter-harvested primarily, and we had excellent administration and a concerted effort by the operators to try to minimize harvest disturbance. The Sula logged sites had on average slightly higher erosion but those amounts overlapped with the unlogged sites. On the Moose Fire we had lower erosion on the logged sites compared to the unlogged sites. But erosion was low overall on both logged and unlogged sites. The woody debris levels on the logged sites were 2-3 times higher than on the unlogged sites. Higher woody debris and litter on the ground is a benefit especially the first year after the fire to help with erosion control and to slow runoff.

Conclusion. Our general soil effects were within the ranges disclosed in the environmental assessments. We owe this to design and implementation of the BMPs and the harvest mitigation measures used to minimize the soil impacts. These measures were effective and soil productivity was maintained on our timber harvest areas. Our success is due to a comprehensive sale planning process that begins with DNRC identifying the forest health and resource issues early on, employing the appropriate specialists to help analyze those effects, and then implementing on the ground site-specific mitigation measures. Lastly and most importantly, is effective sale administration to ensure the proper application of our mitigation measures and the BMPs. On those sites that we've identified problems we try to treat those early on or restore the site as needed. More sensitive sites require more detailed planning and administration.

Recommendations. Future plans should focus on limiting harvest related impacts and implementing our BMPs consistent with our current timber harvest process. I believe we should look forward to evaluating new methods and new equipment options that are cost-effective and provide the highest level of soil and water protection and promote healthy forests. We also need to be diligent about maintaining adequate coarse woody debris and appropriate levels of slash on the ground for nutrient cycling while providing for adequate slash reduction for fire protection.

Mr. McGrath asked what do you attribute the difference between the erosion levels in the Sula Fire and the Moose Creek Fire?

Mr. Collins replied in the Sula area there is gradient parent materials and we expected higher levels of erosion overall naturally in that area and that is what we encountered. The Moose Fire was very low and we actually had the benefit of having a precipitation gauge at that site and we could see that we had normal levels of precipitation throughout the summer which helped with our conifer reestablishment because they had planted some conifers that year. And I also believe that in the North Fork area we have some volcanic ash-influenced soils and they have a higher retention of moisture and typically they could take 12-20 inches per hour of rainfall without having much runoff. I am not sure I made it plain, but our sites were prioritized for our higher risk sites where we thought we would have a higher potential for ground impacts so all of this monitoring data doesn't reflect the actual average across all the state lands, in fact it may be slightly lower in impact.

Governor Schweitzer said I suggest the Board study the printed material you have. This is very important material.

Mr. McGrath said are you going to try to implement these recommendations?

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 12

Ms. Sexton replied this is an ongoing project, and yes absolutely.

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 13

505-1 METALLIFEROUS LEASE APPLICATION (Continued from earlier discussion)

Ms. Sexton said we have found the Administrative Rules pertinent to metalliferous leases. Mr. Mason will present the information.

Mr. Mason said pursuant to the earlier discussion with Attorney General McGrath, the relevant provisions are found in ARM 36.25.606. It provides that year one is the minimum, \$1.00 plus any amount the Board might require of that; years two and three are specified as \$1.00 per acre; years four and five \$2.50 per acre; and year six and thereafter \$3.00. If we are going to entertain an increase for years one, two, and three or beyond that would require rule change. The Board does have the flexibility to set year one as high as it would like. Statute provides only a general prescription that the Board may require rentals.

Mr. McGrath said thank you. Maybe the way to look at this is that we need to review these rules for the future. These were the rules people submitted and we've been operating on, so I am prepared to vote for it. But I am concerned about those numbers, and I don't know what you use as a standard. The federal government's minimal give aways are not a good measure but we should take a look at revising the rules and increasing the rate. One dollar per acre strikes me as being almost foolish.

Governor Schweitzer said I'd like to follow up on something Mr. Johnson said earlier, the question was about grazing leases that would be associated in the same area. If the fellow starts doing some significant activity he will have a lot of equipment there, presumably he would attempt to fence livestock away from whatever improvements he has there and it would be detrimental to our potential for a grazing lease which may even yield more per acre.

Mr. Mason said the grazing lease that would be on there expressly reserves the right for the Board to issue leases for other purposes, primarily minerals and timber. However, the mineral lease that is issued obligated our mineral lessee to make whole for any damage to the surface lessee's operation; repair, replace, compensate for any losses. If the acreage taken out of production is significant enough that his AUM rental would be reduced, then DNRC's Surface Leasing Bureau will review that and reduce the carrying capacity so the grazing lessee is not paying for grazing capacity that he can no longer utilize. Obviously on the rental basis, the \$1.00 per acre is approximately the same as what the grazing lease is on a per acre basis. This one escalates up to \$3.00 per acre. Obviously, for minerals being speculative, the real money in a mineral lease is if you find something commercial and then it is a significant amount.

Governor Schweitzer called for a vote. The motion is on the floor.

Mr. Johnson had previously moved for approval for the metalliferous lease application. Seconded by Ms. McCulloch. Motion carried unanimously.

PUBLIC COMMENT

Roy Andes, MonTRUST, said it is fair to say that the issue of metalliferous lease rates deserves some study perhaps, but MonTRUST is not deeply concerned about the issue of the rental rates. As Mr. Mason said, it isn't the real money in mineral development. Industry wide in general as a land manager you want to encourage exploration and prospecting with the idea that you make the big money once people find something and it is developed.

MINUTES
May 16, 2005
BOARD OF LAND COMMISSIONERS
Page 14

Jason Todd, Montana Logging Association, said he wanted to applaud the Board on its continuation of a good timber program in the state. Fifty-three million board feet means a lot to our organization and our members. It helps us keep our infrastructure going.

Roger Bergemeyer, President of MonTRUST, said I was unable to make the April meeting and I'd like to make a comment between the proposed land exchange between DNRC and John Miller dealing with lands in the Sula State Forest and Lincoln, Montana. In the process, I have prepared a long list of our concerns, and I won't go into that here because some things have changed. I would like to read a couple of paragraphs from the conclusion. MonTRUST certainly sees the value of appropriate exchanges to increase the value of the trust, provide for better long term management, and reduce the cost of that management. This exchange (Miller) does not accomplish any of these objectives and should not be approved. Finally, this proposed exchange points out the importance of legal access to trust lands, not only for management purposes, but for exchange and land banking purposes. I find it interesting that you have seven criteria when you have a land exchange. When you have a land sale there are 26. It seems to me that some of these criteria used for a land sale or purchase might be applied equally or somewhat equally to an exchange as well. The state should have implied access for the management of its lands. This may require condemnation and a few court cases, but in the long run the benefits to the trust and its many beneficiaries would far outweigh the cost both financially and politically. This is something I've dealt with as a professional on state lands for years and it has been really irritating to have people who are supposed to manage these lands told to remove themselves because of legal access. The Board should seriously be looking at the implied access situation. When a person gets a tract of land there is implied access to that land. It seems we have significant impacts on these trust lands because of lack of access. In the Miller exchange, that was pointed out very significantly because the value was reduced dramatically because of the lack of access. It is something we really need to go forward and work on.

Motion to adjourn was made by Ms. McCulloch. Seconded by Mr. McGrath.